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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 008

PHILLIP ALLEN MOORE
1094 Clematis Drive
Sunnyvale, CA 94086

A C C U S A T I O N

Respiratory Care Practitioner Lic. no. 20282
Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 14, 1998, the Respiratory Care Board issued Respiratory Care Practitioner License Number 20282 to Phillip Allen Moore (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on February 19, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3710 of the Code states: “The Respiratory Care Board of
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
3 8.3, the Respiratory Care Practice Act].”

4 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
5 and revoke licenses to practice respiratory care as provided in this chapter.”

6 6. Section 3750 of the Code states:

7 “The board may order the denial, suspension or revocation of, or the imposition of
8 probationary conditions upon, a license issued under this chapter, for any of the following
9 causes:

10 “(d) Conviction of a crime that substantially relates to the qualifications,
11 functions, or duties of a respiratory care practitioner. The record of conviction or a
12 certified copy thereof shall be conclusive evidence of the conviction.”

13 “(g) Conviction of a violation of any of the provisions of this chapter or of any
14 provision of Division 2 (commencing with Section 500), or violating, or attempting to
15 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
16 violate any provision or term of this chapter or of any provision of Division 2
17 (commencing with Section 500).”

18 7. Section 3752 of the Code states:

19 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
20 made to a charge of any offense which substantially relates to the qualifications,
21 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
22 the meaning of this article. The board shall order the license suspended or revoked, or
23 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
24 conviction has been affirmed on appeal or when an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent order under Section
26 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
27 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
28 accusation, information, or indictment.”

8. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

"(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with section 4015) of Chapter 9 of this code."

9. California Code of Regulations, title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.”

COST RECOVERY

10. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

11. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

1 12. Section 3753.1 of the Code states:

2 "(a) An administrative disciplinary decision imposing terms of probation may
3 include, among other things, a requirement that the licensee-probationer pay the monetary costs
4 associated with monitoring the probation."

5 FIRST CAUSE FOR DISCIPLINE

6 (Substantially-related conviction)

7 13. Respondent's license is subject to disciplinary action under code sections
8 3750(d), 3750(g), 3752 [conviction of a substantially-related crime] and CCR 1399.370(a) in that
9 on March 19, 2008, he was convicted on his plea of guilty to Health and Safety Code section
10 11357. The circumstances are as follows:

11 14. On or about December 1, 2007, Sunnyvale Police Officer Gary Cortez
12 investigated a call regarding injury to a male individual upon city property. Officer Cortez
13 observed a male, later identified as Respondent, seated in a vehicle. Officer Cortez walked to
14 Respondent's vehicle to ask if he knew the injured man since the man's identity was unknown.
15 As Officer Cortez spoke with Respondent, the Officer smelled the odor of burnt marijuana
16 coming from within Respondent's vehicle. Officer Cortez then asked to see Respondent's
17 identification. Respondent began searching for his identification, and Officer Cortez observed a
18 clear plastic sandwich size bag containing a green leafy substance sitting on top of other items in
19 respondent's vehicle. Based on his training and experience, Officer Cortez recognized the
20 substance to be marijuana¹. Respondent admitted that the marijuana belonged to him, and stated
21 that he used the marijuana for several medical conditions; however, he did not have a medical
22 marijuana card or a prescription for marijuana from a medical doctor. Respondent informed
23 Officer Cortez that he bought the marijuana for \$20.00 and had smoked one "joint." Officer
24 Cortez seized the bag containing the marijuana and issued a citation to Respondent for violating
25 Health and Safety Code section 11357(b) [possession of less than one ounce of marijuana.]

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28 1. Marijuana is a Schedule I controlled substance as defined by the Health and Safety Code
section 11054(d)(13).

1 Officer Cortez later weighed the marijuana and the content weight was 2.5 grams.

2 15. On or about January 16, 2008, Respondent was ordered to attend one
3 marijuana class and return to court of March 19, 2008 with proof of completion of the class. On
4 March 19, 2008, Respondent entered a plea of guilty to Health and Safety Code section 11357(b)
5 [possession of less than one ounce of marijuana.] Imposition of sentence was suspended and he
6 was placed on two years court probation. Respondent was ordered to use no alcohol or drugs and
7 pay fines.

8 16. Therefore, Respondent's license is subject to discipline pursuant to code
9 sections 3750(d), 3750(g), 3752 [conviction of a substantially related crime], and CCR
10 1399.370(a).

11 SECOND CAUSE FOR DISCIPLINE

12 (Possession of a controlled substance)

13 17. Paragraphs 14 through 15 are incorporated herein.

14 18. Respondent's license is subject to discipline pursuant to his possession of
15 2.5 grams of marijuana, which is in violation of code section 3750.5(a) [possession of a
16 controlled substance.]

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein
19 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

20 1. Revoking or suspending Respiratory Care Practitioner License Number
21 20282, issued to Phillip Allen Moore.

22 2. Ordering Phillip Allen Moore to pay the Respiratory Care Board the costs
23 of the investigation and enforcement of this case, and if placed on probation, the costs of
24 probation monitoring;

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1 3. Taking such other and further action as deemed necessary and proper.

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3 DATED: January 28, 2009

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Original signed by: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant